

(2007) 10 AP CK 0042

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 1844 of 2004

D. Ramachandra Reddy

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319, 319(1), 397, 401
Penal Code, 1860 (IPC) — Section 324, 34, 342, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2008) 1 ALD(Cri) 630

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : T. Niranjan Reddy, for the Appellant; Public Prosecutor for Respondent No. 1 and M. Murali, for the Respondent

Final Decision : Allowed

Judgement

G.V. Seethapathy, J.—This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. assailing the order dated 20th September, 2004 in CrI.M.P. No. 468 of 2004 (SC ST SC No. 28 of 2004) on the file of the Special Judge for SCs and STs (POA) Act, Kurnool wherein the said petition filed by the Sub-Divisional Police Officer, Dhone u/s 319 Cr.P.C. seeking to implead the petitioner herein as accused was allowed.

2. On a complaint given by one Harijana Teliki Chitti Paddaiah, the police registered a case in Crime No. 148 of 2003 for the offences under Sections 324, 506, 342 read with 34 IPC and Sections 3(i), (x) & (xv) of SCs and STs (POA) Act against the five accused. After investigation, the police filed the Charge Sheet against them. During the course of trial, the prosecution filed CrI.M.P. No. 468 of 2004 u/s 319 Cr.P.C. seeking to implead one D.Ramachandra Reddy as an accused and sought for issuance of summons against him on the ground that in the evidence of the complainant who was examined as P.W. 1, P.W.1 stated that the petitioner herein who is the brother of A.1 and A.3 and father of A.5 beat him

with hand on the neck and also abused him by caste. The learned Special Judge allowed the said application observing that on a careful reading of 161 Cr.P.C. Statements of the witnesses, it shows that the petitioner abused P.W. 1 by touching his caste besides beating him on the neck and the same was reiterated by P.W. 1 in his evidence and therefore, there is incriminating material against the petitioner herein. Aggrieved by the said orders, the petitioner herein filed the present Criminal Revision Case.

3. Arguments of the learned Counsel for the petitioner and the learned Additional Public Prosecutor representing the 1st respondent-State and the learned Counsel for the 2nd respondent-defacto complainant are heard and records are perused.

4. In Criminal Petition No. 468 of 2004 filed by the prosecution before the trial Court, it is stated that the petitioner is sought to be impleaded as an accused based on the evidence of P.W. 1 as he stated during the course of chief examination that the petitioner beat him with hand and abused him by caste.

5. A perusal of the Charge sheet discloses that two incidents have been taken place on the date of occurrence i.e., on 22-7-2003. The 1st incident was at 8-30 A.M., When the petitioner is said to have gone to the house of the complainant and castigated him on the issue of trespass of cattle and damage to the field and on the intervention by L.Ws. 2 and 3 namely Mala Ramanaiah and Harijana Laxmanna son of Pullanna, the matter was subsided. The 2nd incident alleged is that on the same day in the evening A.1 to A.5 went to the house of the complainant at about 6-30 P.M., and beat him by abusing him by caste and dragged him to a distance of about 150 yards to the Public Place and tied him to an electric pole and again beat him there.

6. There is no reference in the Charge Sheet to the complicity of the petitioner in the 2nd incident as alleged. So far as the 1st incident that has taken place in the morning is concerned, the only allegation made against the petitioner is that he castigated the complainant and the matter was subsided on the intervention of L.Ws. 2 and 3 namely Mala Ramanaiah and Harijana Laxmanna son of Pullanna. There is no allegation in the charge sheet to the effect that either the petitioner beat the complainant at any time or abused him by caste. Even it is not stated that the petitioner was present at the time of the alleged 2nd incident during which A.1 to A.5 were said to have abused the complainant by caste and beat him. Even the statement of the complainant u/s 161 Cr.P.C. does not disclose that the petitioner abused the complainant by caste. It is only alleged that in the morning when the petitioner questioned the complainant about the trespass by the cattle and damage to the crop, the complainant refuted the same and on that, the petitioner slapped him saying that the complainant was indulging in falsehood and in the meanwhile L.Ws. 2 and 3 namely Mala Ramanaiah and Harijana Laxmanna son of Pullanna intervened and petitioner went away. There is no allegation that the petitioner abused the complainant by his caste. Regarding the 2nd incident that took place at 6-30 P.M., on the evening what is stated by the complainant in his statement u/s 161 Cr.P.C. is that the petitioner's

brothers i.e., A.1 and A.3, petitioner's son i.e., A.5 and others came to the house of the complainant and abused him by caste and beat him with their legs and also sticks and dragged him to the public place. There is no reference to the presence of the petitioner at the time of the alleged 2nd incident about his participation in the said offences. Even the statement of the alleged eye witnesses L.Ws. 2 to 5 namely Mala Ramanaiah and Harijana Laxmanna son of Pullanna, Harinjana Thimmakka and Harijana Laxmanna, wife of Late China Mathanna do not disclose that the petitioner abused the complainant by caste or beat him on 22.7.2003.

7. It is to be noted that the police have filed the Charge sheet only regarding the alleged 2nd incident that took place on the evening of 22-7-2003. There is absolutely no material on record to show the presence of the petitioner at the time and place of the said occurrence or his involvement in the alleged offences.

8. In a decision reported in Smt. Minati Das v. Radhakanta Patra And Ors. 1994 Crl.L.J. 305, where the High Court of Calcutta held thus:

It can be seen that the word "evidence" used in Section 319 Cr.P.C. includes or refers to both proposed or possible evidence as well as the evidence adduced, if any. Of Course the proposed or possible evidence must have a sustainable basis and it must not be merely speculative. As for example, if the statement recorded u/s 161 Cr.P.C. clearly shows the participation of a person in the commission of an offence but such person has not been included as accused in the charge-sheet by mistake or for any unexplained reason, the court in an appropriate case may take notice of such statement recorded under Section 161 Cr.P.C. and also take action on the basis of the same u/s 319 Cr.P.C. However, while looking into such statement court has to be cautious and careful. Further it is also to be noted that the word "may" used in Section 319(1) makes it rather optional and discretionary for the trial court to take any action under the said section.

9. In the present case, even if the statement u/s 161 Cr.P.C., of all the eye witnesses are taken into consideration, there is absolutely no incriminating material contained therein as against the petitioner. It is only for the 1st time in the evidence that P.W. 1 has chosen to depose that the petitioner herein abused him by caste during the 1st incident that took place in the morning on 22-7-2003. The veracity of the said evidence tested as against the earlier statement of the complainant in the F.I.R. or during the course of investigation u/s 161 Cr.P.C. is a matter to be considered while appreciating and evaluating testimony of P.W. 1.

10. In a decision reported in Shanthilal Proprietor, Visakha Jewellery, Visakhapatnam v. State of A.P. 2002 (1) ALD 641 (AP) this Court held at paragraph 7 as follows:

From a perusal of the provision herein above excerpted, what is sine quo non is that it should appear from the evidence that any person not being the accused has committed any offence for which such person could be tried together with

the accused. Therefore, the evidence adduced in the case shall disclose that the proposed accused appear to have committed an offence.

11. In the above case, the decision of apex Court reported in Michael Machado and Another Vs. Central Bureau of Investigation and Another, was referred to at paragraph 12 wherein it was held thus:

But even then, what is conferred on the Court is only a discretion as could be discerned from the words "the Court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time, which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against other persons.

12. In the present case, the record of investigation does not disclose any incriminating material as against the petitioner. Simply because P.W. 1 or any other witness has chosen to state for the first time against a person who is not an accused attributing some overt act or the other such other person cannot be automatically roped in. Without there being any material on record, to warrant inclusion of such other person as an accused and to proceed against him as well. The discretionary power conferred on the Court u/s 319 Cr.P.C. has to be exercised in a judicious manner and the Court is not bound to rope in persons as accused and issue summons simply because some witness or the other has mentioned their names for the first time in their evidence especially when there is no material on record to substantiate such allegation made against such other person warranting his impleadment as an accused.

13. If really the petitioner has committed the alleged offences, there is absolutely no reason as to why the petitioner has not chosen to state so either in his complaint basing on which the F.I.R. was registered or in his statement u/s 161 Cr.P.C. during investigation. Neither the complainant nor any of the alleged eye witnesses for the alleged incident have made any allegation as against the petitioner so as to constitute the alleged offence.

14. In the circumstances of the case and in the light of the principles laid down in the above decisions, the impugned order of the learned Special Judge in allowing the Crl.M.P. No. 468 of 2004 and directing the impleadment of the petitioner as an accused, based on the erroneous observation that in the statements u/s 161 Cr.P.C. witnesses have categorically stated that the petitioner abused P.W. 1 by caste, is unsustainable and the same is accordingly set aside.

15. In the result, the Criminal Revision Case is allowed.